sane or insane, an excepted risk; *Bottger* v. *Legion of Honor,* 79 N. Y. Supp. 684; but the contrary view is expressed in *Maccabees* v. *Hammers,* 81 Ill. App. 560, on the ground that the company might make restrictions to avoid extra hazard—of which suicide is one. Several courts have ventured generalizations. *Webber* v. *Maccabees,* 172 N. Y. 490, 65 N. E. 258, 92 Am. St. Rep. 753, stating that if by the change the member is or may be deprived of vested contract rights it is unreasonable; a change in the plan of insurance itself and not merely in the method of carrying out the plan, as where the amount of benefit payable by the certificate is reduced; *Wuerferr* v. *Order of Druids,* 116 Wis. 119, 92 N. W. 433, 96 Am. St. Rep. 490; if it amounts to a change in the essential elements of the contract, thereby disturbing a vested right, it is unreasonable; *Weiler* v. *Equitable Union,* 92 Hun 277, 36 N. Y. Supp. 734. No general rule has yet been drawn; each case has been decided in accordance with the particular facts.

JUDGMENT—RES JUDICATA.—Plaintiff brings this action to recover in his own right from the defendant company for loss of services of his minor son and expenses incurred on account of personal injuries received by said minor in an accident which occurred in the manufacturing plant of said company, and alleged to have been caused by and through its negligence. In a former action brought by the plaintiff as next friend of his son, in which he sought to recover damages for injuries growing out of the same accident, judgment was rendered in favor of the defendant. Defendant pleads said judgment in bar. *Held,* that, as evidence of loss of service of the child during minority and of money expended on account thereof, was introduced in the former action, judgment for the defendant in such action is a bar to the present action by the parent. *Bowring* v. *Wilmington Malleable Iron Co.* (1907), — Del. —, 67 Atl. Rep. 160.

When a minor is injured by tortious act, two causes of action arise: I. In favor of the minor, for the personal injury and suffering; to recover damages therefor, he must sue by his guardian or next friend. COOLEY, TORTS (2nd ed.), p. 268 ff; *Rogers* v. *Smith,* 17 Ind. 323; *Wilton* v. *Middlesex R. R. Co.,* 125 Mass. 130. II. In favor of the parent. A father or one standing in loco parentis, is entitled to the earnings of his minor son, unless he has emancipated him. *Halliday* v. *Miller,* 29 W. Va. 424; *Savings Bank* v. *McLean,* 84 Mich. 625; *Otis* v. *Hall,* 117 N. Y. 131. Hence he has an undoubted right of action for the loss or deprivation of those services, by a tort committed against such child. COOLEY, TORTS, 228 (2nd ed.); 3 SUTHERLAND, DAMAGES, § 279; *Karr* v. *Parks,* 44 Cal. 46; *Shields* v. *Yonge,* 15 Ga. 349; *Rogers* v. *Smith,* 17 Ind. 323. This much is granted by the case under discussion; but its decision is based upon the ground that the son has been emancipated. Emancipation need not be expressed but may be implied by the law from circumstances, or inferred from the conduct of the parent. *Farrel* v. *Farrel,* 3 Houst. (Del.) 633; *Armstrong* v. *McDonald,* 10 Barb. (N. Y.) 300. According to the reasoning of the principal case, if the parent, in acting as next friend, permits the minor to sue for damages for loss of services, he thereby emancipates him; the right of action for loss of services,

though it belonged originally to the parent, is transferred to the minor. Hence the parent has nothing upon which to base a subsequent suit. This theory does not appear to have met with great favor, but is supported by a few courts. See *Gooden* v. *Rayl et al.,* 85 Iowa 592, 52 N. W. 506; *Abeles* v. *Bransfield,* 19 Kans. 16. Other courts proceed upon the theory of estoppel. It is true as a general rule that a party to a suit is bound only in the capacity in which he appears. Therefore an action by a parent for the loss of services of his minor child, is not barred by the *mere* fact that the child by her parent or next friend has already recovered damages for the same injury. *Milton* v. *Middlesex Ry Co.* 125 Mass. 130; *Texas & P. Ry.* v. *Morin,* 66 Tex. 133, 18 S. W. 345. But a plea of res adjudicata, which shows that the party sought to be estopped in his individual capacity had sued in the former case in the character of guardian or next friend is as a plea a bar, if it also shows that the merits of the case, as to such party individually were in some way involved in the issues and determined by the prior judgment. BLACK, JUDGMENTS (2nd ed.) § 536 ff; *Gernstein* v. *Fisher,* 12 Misc. Rep. 211, 33 N. Y. Supp. 1120; *Furlong* v. *Banta,* 80 Hun 248. The "merits of the case" as to the parent individually, are necessarily involved if he sues as next friend for his minor child and permits the latter to recover for loss of services. *Baker* v. *Flint, etc., R. R. Co.,* 91 Mich. 298, 51 N. W. 897, 16 L. R. A. 154, 30 Am. St. Rep. 471, and cases there cited.

MASTER AND SERVANT—LIABILITY OF MASTER FOR NEGLIGENCE OF SERVANT—FELLOW-SERVANTS—DUTY OF MASTER TO WARN AND INSTRUCT SERVANT WHEN SET AT DANGEROUS WORK.—Plaintiff was employed by defendant as a common laborer in an open slate quarry, working under a gang boss, chiefly about the hoisting engine, in loading boxes, etc. He was not an experienced quarryman and had never had anything to do with blasting. Three blasts had been put in and attempts to explode them by electricity had failed. Some of the men with the gang boss then went down and the boss set plaintiff to dig the tamping out of one of the holes with a crowbar, and while so engaged the blast exploded injuring plaintiff. Plaintiff had never done such work and the evidence showed that it had never before been done in the quarry while he was employed there. He was given no warning of the danger and no instruction except to pour water in the hole as he worked. There was expert testimony that the drilling out of unexploded charges was highly dangerous, and in the proper conduct of the work should never be done, and also testimony that it was contrary to the orders of the defendant's superintendent, but such orders were not shown to have been known by plaintiff. *Held,* that the negligence of the gang boss was imputable to defendant and that the question of its liability for the injury was properly submitted to the jury. *Peters et al.* v. *George* (1907), — C. C. A. 3rd Cir. —, 154 Fed. Rep. 634.

The case is of interest on account of the principles upon which it was decided and their application to this state of facts. The fellow-servant rule that where a master uses due diligence in the selection of competent and trusty servants and furnishes them with suitable means to perform the services in which he employs them he is not answerable to one of them for an